

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 26-50 are pending in this application. Claims 26, 36, 44, 46 and 49 are amended by the present amendment. Applicants respectfully submit the claim amendments find support in the claims as originally filed. Thus, no new matter is added.

In the outstanding Office Action, Claim 49 was rejected under 35 U.S.C. § 101; Claims 26, 27, 34, 35, 38, 40, 47 and 49 were rejected under 35 U.S.C. § 102(e) as anticipated by Marinescu et al. (U.S. Patent No. 7,089,333 herein “Marinescu”); Claims 28-30 were rejected under 35 U.S.C. § 103(a) as unpatentable over Marinescu in view of Mincher et al. (U.S. Patent No. 5,408,506 herein “Mincher”); Claims 36 and 37 were rejected under 35 U.S.C. § 103(a) as unpatentable over Marinescu in view of Shay et al. (U.S. Publication No. 2004-0114607 herein “Shay”); Claims 31 and 32 were rejected under 35 U.S.C. § 103(a) as unpatentable over Marinescu in view of Stichter (U.S. Patent No. 7,068,746); Claims 33 and 39 were rejected under 35 U.S.C. § 103(a) as unpatentable over Marinescu in view of Juszkiewicz et al. (U.S. Patent No. 6,353,169 herein “Juszkiewicz”); Claims 41, 42 and 48 were rejected under 35 U.S.C. § 103(a) as unpatentable over Marinescu in view of Yamashita et al. (U.S. Patent No. 6,377,979 herein “Yamashita”); Claim 45 was rejected under 35 U.S.C. § 103(a) as unpatentable over Marinescu; Claim 50 was rejected under 35 U.S.C. § 103(a) as unpatentable over Marinescu in view of Yamashita and Katta et al. (U.S. Patent No. 7,133,936 herein “Katta”); Claim 43 was rejected under 35 U.S.C. § 103(a) as unpatentable over Marinescu in view of Yamashita; and Claims 44 and 46 were indicated as allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Initially, Applicants gratefully acknowledge the indication of allowable subject matter in Claims 44 and 46. Accordingly, Claims 44 and 46 are rewritten in independent form as suggested by the outstanding Office Action. Thus, Applicants respectfully request the objection to Claims 44 and 46 be withdrawn.

Next, Applicants respectfully traverse the rejection of Claim 49 under 35 U.S.C. § 101 as directed to nonstatutory subject matter. Claim 49 is amended to recite “a computer readable medium containing program instructions for execution on a computer, which when executed by a processor, cause the computer to perform the method as recited in claim 26.” Accordingly, Claim 49 is in compliance with all requirements under 35 U.S.C. § 101. Thus, Applicants respectfully request the rejection of Claim 49 under 35 U.S.C. § 101 be withdrawn.

Applicants respectfully traverse the rejection of Claims 26, 27, 34, 35, 38, 40, 47 and 49 under 35 U.S.C. § 102(e) as anticipated by Marinescu, with respect to amended independent Claim 26. Independent Claim 26 is amended to recite:

...wherein at least some of the data streams or data packets are temporarily buffered in the reproduction units before reproduction, with audio files involving buffering in the region of approximately 1 to 5 sec.

This feature was originally included in amended Claim 36, which was rejected under 35 U.S.C. § 103(a) as unpatentable over Marinescu in view of Shay. To this end, the outstanding Office Action states:

Marinescu et al. do not specifically teach that at least some of the data streams or data packets are temporarily buffered in the reproduction units before reproduction, with audio files involving buffering in a region of approximately 1 to 5 seconds, and with the buffering being performed dynamically and so as to be matched to circumstances of the network.¹

¹ See the outstanding Office Action, page 7, lines 11-15.

However, the outstanding Office Action goes on to state that Shay teaches this feature and that it would have been obvious to one of skill in the art to combine the teachings of Marinescu and Shay to create the presently claimed invention.

However, the present application claims priority from Switzerland Patent Application No. 1861/02, filed November 6, 2002. In accordance with 37 CFR § 1.55(a)(4), enclosed please find an English translation of this application, along with a statement that the translation of the priority document is accurate. As such, it is respectfully submitted that the enclosed documents perfect the claim to priority to Switzerland Patent Application No. 1861/02 under 35 U.S.C. § 119. The filing date of Switzerland Patent Application No. 1861/02, is November 6, 2002, which antedates the publication date of June 17, 2004 and the filing date of April 3, 2003 of Shay. Therefore, It is respectfully submitted that Shay does not qualify as prior art with respect to the present application under 35 U.S.C § 102.

Accordingly, Applicants respectfully submit that amended Claim 26 patentably defines over Marinescu and Shay. As such, it is respectfully requested that the rejection of Claims 26, 27, 34, 35, 38, 40, 47 and 49 under 35 U.S.C. § 102(e) be withdrawn.

Finally, Claims 28-33, 36, 37, 39, 41-43, 45, 48 and 50 depend from independent Claim 26 which is believed to patentably define over Marinescu and Shay, as discussed above. Further, Applicants respectfully submit that Mincher, Stichter, Juszkiewicz, Yamashita and Katta also fail to teach or suggest the claimed features lacking in the disclosure of Marinescu. Thus, it is respectfully requested those rejections under 35 U.S.C. § 103(a) also be withdrawn.

Accordingly, it is respectfully submitted that independent Claims 26, 44 and 46 and all claims dependent therefrom are allowable.

Consequently, in light of the above discussion and in view of the present amendment, this application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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